

## Analysis

# No Crime, No Punishment: On the End of the Anna Politkovskaya Murder Trial

By Angelika Nussberger and Yury Safoklov, Cologne

## Abstract

From November 2008 to February 2009, the Moscow military tribunal heard the case of the murder of prominent journalist Anna Politkovskaya. However, those sitting in the dock were not the main perpetrators, but only suspected accomplices to the act. All four suspects were acquitted of murder, since the prosecution's evidence failed to convince the jury. The case had many shortcomings in terms of the rule of law, but the jury's decision was ultimately a convincing application of the presumption of innocence.

## The Issues at Stake

In Russian criminal trials, acquittals are rare. The most famous acquittal is associated with Vera Zasulich. She had shot the governor of St Petersburg, who was generally hated for his cruelty, at close range and seriously injured him. Although there was no doubt as to her participation in the crime, she was acquitted by a jury on 11 April 1878. The jurors' assessment of the perpetrator and the victim was based on moral rather than legal considerations, giving rise to a fundamental debate over the introduction of trial by jury as part of the judicial reforms initiated by Alexander II and over larger matters of the law and justice in Russian society at the end of the 19<sup>th</sup> century.

The trial in the case of the murder of Russian journalist and human rights activist Anna Politkovskaya also reflects the way society deals with matters of the law and justice and has been regarded as a litmus test for the state of the rule of law in Russia. The crux of the matter was not whether the trial would result in conviction or acquittal, but rather the way in which the court would arrive at its result and the underlying reasoning. Both the Russian population and the broader global public therefore followed the trial with great interest. While one may regard the acquittal as justified, the handling of the points of law will likely meet with disapproval.

## Starting Point: Murder

In her news stories, Anna Politkovskaya discussed grievances concerning the highest echelons of national politics. Her last reports were dedicated to criticizing the Chechen government and the instability prevalent across the entire Caucasus region. It was no secret that her research and analysis, which pulled no punches, won her many enemies. Observers described Politkovskaya's case as the "chronicle of a murder foretold".

On 7 October 2006, Politkovskaya was shot dead in the elevator of her house on Lesnaya Street in Moscow.

While searching the scene of the crime, investigators recovered four spent shells; what type of weapon was used remained unclear. The way in which the murder was committed indicated a contract killing. The state prosecutor's office initiated a murder investigation under Art. 105, section 2b of the Russian Federation's criminal code ("Murder of a person or their relatives in connection with this person's official activity or the discharge of his or her public duty").

## Preparations for the Court Case

On 8 October 2007, the state prosecutor in charge, Petros Garibian, told the Russian news agency Interfax that the murder of Anna Politkovskaya had been solved. The responsible parties had been identified and arrested, and had already been arraigned on murder charges. These remarks, however, referred not to the actual instigators, but to persons who had allegedly prepared and coordinated the deed. Initially, reference was made to 11 suspects, ten of whom were charged with murder. This statement was later revised after one of the accused had filed a complaint against his detention. State prosecutor Vyacheslav Smirnov, who was responsible for dealing with the complaint, later referred to nine defendants. In the further course of the investigation, another five individuals were released from detention due to "lack of criminal actions", so that only four defendants remained in prison.

Three suspects – Sergei Khadzhikurbanov as well as the brothers Dzhabrail and Ibragim Makhmudov – were indicted on murder charges. The fourth suspect, Federal Security Service (FSB) Lieutenant-Colonel Pavel Ryaguzov, was initially also charged with murder, but this charge was later changed to exceeding his official powers (Art. 286 of the Criminal Code) and extortion (Art. 163). These accusations, too, were changed once more; Ryaguzov and Khadzhikurbanov were charged with having jointly committed assault and battery dur-

ing the course of their official duties; however, these charges referred to another case and victim. Rustam Makhmudov, the brother of Dzhabrail and Ibragim, was identified as the actual gunman who was alleged to have shot Politkovskaya. He was (and remains to this day) a fugitive, however, and the Russian state prosecutor's office is pursuing separate proceedings against him.

The attorney-general's office had approved the indictment. It is safe to say that there had been a great deal of political pressure finally to present the perpetrators, since even foreign politicians had on many occasions denounced the lack of urgency on the part of state bodies in solving the case. However, the fact that the trial in the case of this contract killing was begun without the arrest of either the contract killers or the people who planned the killing was unusual.

### **The Trial**

From the start, there was disagreement as to whether the trial ought to be held in an "ordinary" criminal court or in a military court. Since Pavel Ryaguzov was a member of the FSB and had originally been charged with murder along with the other suspects, jurisdiction lay with the military courts. Politkovskaya's family applied for the case to be handed over to a general criminal court, since they feared that a military judge might be prejudiced and that it would be easier to hold the trial behind closed doors if it were held in a military court. The state attorney did not accede to their request, however, and handed the case to the Moscow regional military court, which had earlier already handled the case relating to the murder of journalist Dmitry Kholodov.

### **Closed Session**

As it turned out, these concerns regarding the possibility of the public being excluded from a closed court session were not entirely unfounded. The state prosecution applied for closed hearings, contending that its evidence included state secrets. Initially, military judge Evgeniy Zubov refused this application. That changed, however, when the defense applied for a trial by jury. To the great surprise of many, the judge approved this request in preliminary proceedings. While trials by jury had been frequently held before ordinary criminal courts due to a number of changes to the law between 1993 and 2004, there was no precedent for a jury trial in military courts. The military judge imposed the condition that the proceedings would be held in closed session, arguing that the jurors would come under pressure.

On 19 November 2008, the public was refused access to the courtroom. The reason given was that the ju-

rors refused to enter the courtroom as long as representatives of the media were present. In justifying this ruling, the judge cited Art. 241, section 2., no. 4 of the Criminal Procedure Code ("guaranteeing security for the participants in the judicial proceedings, for their close relatives, relations or near persons"). One of the jurors, Evgeniy Kolesov, publicly and vehemently disputed the official account according to which the jurors had called for a closed session. Furthermore, he claimed that the jurors had been told to sign a statement to this effect before the beginning of the trial, but all had refused to do so. One of the defense lawyers regarded these statements by Kolesov, who was celebrated as a "hero" by the media, as sufficient cause to dissolve the jury. It was debated whether Kolesov should be removed from the jury due to "illegal communication with persons who are not part of the composition of the court, which deals with the circumstances of the criminal case under examination" (Art. 333 section 2, no. 3 of the Criminal Procedure Code). This became a moot point, however, as Kolesov withdrew from the jury at his own request; later, another four jurors were replaced for various reasons. The decision on the exclusion of the public was withdrawn on 25 November 2008; however, procedural issues would continue to be decided without members of the media present.

### **The State Attorney Applies to Disqualify the Judge**

As soon as the public was readmitted to the trial, the state attorney accused military judge Zubov of bias and applied to have him replaced with another judge. This request was controversial because, according to the Criminal Procedure Code, the decision in the matter of disqualifying Zubov as the presiding judge lay with Zubov himself – in other words, he was responsible for assessing his own possible bias. In the end, he ruled against the request, arguing that the charges of prejudice were not grounded on substantiated facts.

### **The Charges**

The state attorney's office then brought charges based on the following version of events: Allegedly, Sergei Khadzhikurbanov had been contracted to kill Anna Politkovskaya. He had bought the murder weapon, handed it over to the killer, and planned the details of the crime with help from his accomplice Pavel Ryaguzov, who had found Politkovskaya's address in the FSB database and passed it on to Khadzhikurbanov. Since the journalist had moved in the meantime, Khadzhikurbanov had used the Makhmudov brothers to tail her. On 3, 4,

and 5 October 2006, they had gone to Politkovskaya's house with another brother, Rustam, who ultimately carried out the crime, for a "dry run" at the scene of the eventual killing. On the day of the murder, 7 October 2006, Dzhabrail is alleged also to have taken his brother Rustam to Politkovskaya's residence.

### **Incriminating Evidence Presented by the State Attorney**

The state attorney presented testimony concerning threats that Politkovskaya had received. In particular, the editor of *Novaya Gazeta*, where the journalist had been working, confirmed that threats had been received and cited sources according to whom the defendants had been involved in the murder. The victim's children also cited threats and testified to the presence of "strange people" in their house about whom Politkovskaya had always warned them.

A witness who, being shielded by a witness protection program, did not have to testify in public, had allegedly told the judge about a conversation with Khadzhikurbanov in which the latter had stated his intention to gather information on Politkovskaya. However, in meetings with the media, the defense denied that any such claim had been made. The prosecution tried to show that the defendants knew one another by presenting a printout of the address book in Dzhabrail Makhmudov's mobile phone. The list included the telephone numbers of Ibragim Makhmudov, Sergei Khadzhikurbanov, and Pavel Ryuguzov.

Furthermore, the prosecution presented to the jury the bullet shells, pictures and sketches of the scene of the crime, and video footage, in particular the footage taken from a surveillance camera outside the house entrance that had recorded the alleged killer and his car. Expert testimony confirmed that fabric fibers found on the murder weapon were also present in the car used by the defendants. The prosecution further claimed to have proof that on the day of the murder, the Makhmudov brothers had placed a telephone call within the city quarter where Politkovskaya lived.

### **Exonerating Evidence Presented by the Defense**

The defense pointed out a large number of discrepancies and contradictions in the version presented by the prosecution. The attorneys argued that the provenance of the murder weapon was unclear, the fiber analysis was incomplete and unconvincing, and the exact time of the shooting had not been verified unequivocally; accordingly, it was possible to draw various conclusions from

the evidence presented. They also called into doubt the video footage allegedly showing the crime, as the events it purported to show did not match the timeline presented. The defense also rejected the assumption that the fugitive "gunman" Rustam Makhmudov had been involved in the killing, as his physique did not match that of the person shown in the video footage; in its final argument, the state prosecution only referred to him as the driver of one of the witnesses and no longer mentioned the murder charges. As far as the defense was concerned, all of the accused had credible alibis. Furthermore, they had not used the car depicted in the video on the day of the killing. Khadzhikurbanov, the alleged main organizer, had only been released from prison two weeks before the murder and had had no time to plan and prepare the shooting.

One particular slip-up by the prosecution in the hearing of its evidence was that it lost the decisive video presentation during the trial, so that investigators could only present a copy to the state prosecutor's office. This delayed the entire trial.

### **The Verdict**

The verdict was announced on 19 February 2009. The jurors unanimously found the defendants not guilty. They did not believe it had been proven that Ibragim and Dzhabrail Makhmudov, Sergei Khadzhikurbanov, and Pavel Ryuguzov had made the respective contributions to the murder that they had been accused of. The defendants were immediately released in the courtroom after the verdict.

### **Reactions**

The Russian media unanimously criticized the unsatisfactory quality of the state prosecutor's investigations and discussed the negative effects of such "slipshod" criminal proceedings on the protection of free speech and the press. Furthermore, as expected, the verdict set off a new round of debates over the pros and cons of jury trials, which were rebuked as subjective on the one hand, while on the other hand being praised for their bold and clear judgment.

### **Further Course of Proceedings**

The "not guilty" verdict did not mark the end of the proceedings. As soon as the defendants had been released, the prosecution announced its intention to appeal, as military judge Zubov had allegedly violated the Code of criminal proceedings. A request to this effect was lodged with the court of appeal on 27 February 2009, so that the verdict handed down by the court of first instance

did not take effect. The defendants' lawyers are greatly concerned that – as statistical evidence would lead one to expect – the acquittal could be overruled by a higher court. The children of the murdered journalist, who are joint plaintiffs, did not intend the hearing to challenge the acquittal; their aim is to find the real culprits.

The investigation against Rustam Makhmudov and against the unidentified mastermind who ordered the killing continues.

### Conclusion

There can be no doubt that the trial is one of the most embarrassing episodes in the history of the Russian state

prosecution service, and is also a blemish on the record of the military judge, who was most likely overtaxed as a single judge in a case of such importance. The jurors, on the other hand, gave a highly creditable performance and proved both their legal expertise and their moral courage; they took the presumption of innocence seriously. This constitutes a glimmer of hope and a step towards a strengthening of the rule of law that President Medvedev has so eloquently called for.

It remains to be hoped that the true perpetrators will receive their just deserts. Real crime must be met with real punishment.

*Translated from German by Christopher Findlay*

### *About the authors*

Angelika Nußberger is a professor of Constitutional Law and Eastern European Law at the University of Cologne and the director of the Institute for Eastern European Law.

Yury Safoklov is a trainee solicitor and academic assistant at the Institute of Eastern European Law.

### *Further reading*

- Raul Khatymovich Yakupov, *Ugolovnyi protsess: uchebnyk dlya vusov* [The Criminal Trial: A College Textbook], fifth edition, TEIS publishers, Moscow 2005.
- Anna Politkovskaya, *A Small Corner of Hell: Dispatches from Chechnya*, Chicago: The University of Chicago Press, 2003.
- Anna Politkovskaya, *Putin's Russia*, New York: Metropolitan Books, 2005.
- Elfie Siegel, "On the death of Anna Politkovskaya," Russian Analytical Digest No. 9, 7 December 2006.